

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FELICIA MARIE DYER,

PETITIONER,

CASE NO. 2:06-CV-14898

HON. GEORGE CARAM STEEH

v.

CLARICE STOVALL,

RESPONDENT.

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ORDER ACCEPTING MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

This matter is before the court on petitioner Felicia Dyer's petition for writ of habeas corpus. Petitioner challenges the Michigan Supreme Court's denial of her application for leave to appeal, raising the seven claims she raised in the Supreme Court as grounds for her petition. Petitioner claims that 1) the imposition of her sentence was based on facts not found by the jury, violating her right to a jury trial; 2) her sentence was disproportionate due to an inaccurate scoring of sentencing guidelines; 3) she was denied effective assistance of counsel; 4) evidentiary rulings regarding a group photograph and a prior search warrant denied her the due process of law; 5) the trial court's preliminary instruction on the burden of proof denied her due process of law and right to a jury trial; 6) prosecutorial misconduct denied her due process; and 7) the evidence was insufficient to prove guilt beyond a reasonable doubt. On June 16, 2008, the Magistrate Judge issued a Report and Recommendation recommending that the application for writ of habeas corpus be dismissed because the state courts' resolution of Petitioner's claims did not result in a decision which was

contrary to, or which involved an unreasonable application of, clearly established federal law. After an approved extension, Petitioner timely filed objections. The court has reviewed the file, record, and Magistrate Judge's Report and Recommendation, and for the reasons set forth below, accepts the Magistrate Judge's Recommendation.

A judge of the court has authority to "accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate judge," but "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C.A. § 636(b)(1)(C). However, objections to a magistrate judge's report or recommendations must "state the basis for the objection." LR 72.1. Here, Petitioner merely reiterates her original claims without stating any basis for her objections and the Court will therefore reject Petitioner's habeas claim on the merits.

Before Petitioner may appeal the Court's decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed R. App. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. See Slack v. MacDaniel, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its

examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37.

Having considered this matter, the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right as to her claims. A certificate of appealability is not warranted.

Accordingly,

IT IS ORDERED that the Magistrate's Report and Recommendation is accepted as the findings and conclusions of this court and that petitioner's petition for writ of habeas corpus is DISMISSED WITH PREJUDICE for the reasons well-developed in the Magistrate Judge's Report and Recommendation.

Dated: August 15, 2008

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 15, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Deputy Clerk